

COMPTROLLER GENERAL OF THE UNITED STATES

Washington 25

B-89876

December 30, 1949, rice

The Honorable
The Secretary of the Navy

My dear Mr. Secretary:

Reference is made to your letter of October 7, 1949, relative to the payment of additional compensation--pursuant to the provisions of section 207 of the Independent Offices Appropriation Act, 1949, as amended by section 104 of the Supplemental Independent Offices Appropriation Act, 1949, and the provisions of Executive Order No. 10000 dated September 16, 1948--to employees while they are on annual leave in the United States.

Your questions arise out of those cases in which employment agreements to remain at a Territorial post of duty for a specified period have expired and the employees have executed renewal contracts. It is stated to be the policy of your Department to continue to pay the additional compensation, authorized by law as a Territorial post differential, to such employees during periods of leave in the United States. However, in some instances, it is stated that after the employees receive payment of compensation, including the Territorial post differential covering the period of annual leave, they default on the renewal contracts by terminating their employment without returning to their post of duty. In those cases you state it to be the established procedure of your Department to effect refund of additional compensation payments made for such period of leave by withholding any sums remaining due after receiving notice of the employee's termination and to initiate collection of any balance in accordance with the usual procedure. However, because of doubt as to the liability of the fiscal officer in making additional compensation payments to an employee for the period the employee is absent from his post on leave, you request a decision on the following questions:

"1. Where an employee, authorized to receive additional compensation in accordance with section 207 of the Independent Offices Appropriation Act, 1949, as amended by section 104 of the Supplemental Independent Offices Appropriation Act, 1949, completes his employment agreement, executes a renewal, and returns to the United States on leave prior to the expiration of the renewal agreement, is it proper to pay such employee the additional compensation while he is carried on the payroll in a leave status?

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"2. If the employee, under the circumstances stated above, defaults on his renewal agreement and fails to return to his post of duty, is the fiscal officer liable under his bond for the amount of additional compensation paid to the employee from the date of departure from his post of duty?"

Section 208 of Executive Order 10000, dated September 16, 1948, 13 F. R. 5453, provides, in pertinent part, as follows:

"(a) The following shall govern the payment of Territorial post differentials and Territorial cost-of-living allowances under this Part:

"(1) Payments shall begin as of the date of arrival at the post on assignment, transfer, or detail and shall stop as of departure from the post for separation, transfer, or detail, except that in the case of local recruitment such payments shall begin and stop as of the beginning and end of employment.

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"(3) Payment shall be made for all periods of sick leave and annual leave taken during the period covered by item (1) above and for transit time authorized for purposes of leave so taken."

Under the foregoing provisions additional compensation as Territorial post differential and Territorial cost-of-living allowance may be paid for all periods of annual or sick leave which occur between the date an employee arrives at the post and the date on which he departs therefrom "for separation, transfer, or detail." In the case of an employee who is authorized to take annual or sick leave and departs from his Territorial post in that status, it reasonably cannot be said that such departure was for separation, transfer, or detail within the meaning of section 208(1), supra. Accordingly, question No. 1 presented in your letter is answered in the affirmative, and question No. 2 is answered in the negative.

Of course, when it is known beforehand that an employee does not intend to return to his Territorial post of duty but actually is leaving for separation purposes, the granting of leave administratively should be refused and--in accordance with usual applicable rules and regulations--the services of the employee should be terminated and he should be paid a lump sum for his accrued annual leave.

Sincerely yours,

(Signed) LINDSAY C. WARREN

Comptroller General
of the United States